IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 116 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HIREN N AMIN

Versus

MORBI NAGARIK SAHAKARI BANK LTD.

Appearance:

1. Civil Revision Application No. 116 of 2004

MR MITESH R AMIN for Petitioner No. 1-3

MR SANDEEP N BHATT for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

MR CHIRAG R KOTHARI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/04/2004

ORAL JUDGEMENT

Rule. With the consent of the parties matter is

taken up for final hearing today.

2) The petitioners herein are the original defendants of Special Civil Suit No.244/2002, which is pending before the Civil Judge (S.D.), Morbi. The said suit is filed by the respondent No.1, viz., Morbi Nagarik Sahakari Bank Ltd. The said suit is filed for recovery of Rs.1,29,18,122.22 ps. In the said suit, since the present petitioners could not file their written statement within a reasonable time, the trial Court initially passed an order by which right of submitting written statement was closed by the trial Court. Thereafter, the petitioners submitted an application Exh.49 requesting the trial Court to allow them to file their written statement and allow them to produce documents, by setting aside the earlier order by which their right to defend the suit is closed. The trial Court, by the impugned order, rejected the said application on the ground that even though summons was served upon the defendants in May 2003, they have not filed their written statement within 90 days, against that order this Revision Application is filed.

3) Mr.Mitesh R.Amin, learned advocate for the petitioners submitted that at the relevant time the present petitioners were in jail in connection with some criminal complaint filed by the respondent No.1-original plaintiff and since they were in jail they could no file their written statement within the stipulated time. However, in application Exh.49, the concerned advocate for the petitioners has not mentioned this fact and the said application is as vague as it can be, which is made without giving any particulars.

4) Mr.Bhatt, learned advocate for the respondent No.1 has pointed out that it is true that the defendants were in jail for some time in connection with criminal case but it was the duty of the defendants to state this factual aspect before the trial Court, which is not done in this case. However, he submitted that, if, as a last chance, this Court gives permission to the petitioners to file written statement, the petitioners should be directed to pay heavy cost, as they were absolutely negligent in not filing written statement in time and their advocate was also negligent in not stating correct facts in the application.

5) It is true that the application submitted before the trial Court is absolutely vague and nothing is stated in it about the fact that the petitioners were in jail at the relevant time. However, considering the fact that

said suit is filed for recovering a large amount, as well as, considering the fact that the petitioners were in jail for some time, it would be just and proper to allow the defendants to file written statement and to contest the suit on merits. The defendants are also permitted to produce documentary evidence on record.

6) Considering the aforesaid aspect of the matter, as well as considering the request of Mr.Bhatt about imposing cost, I allow this revision application by setting aside the impugned order of the trial Court, which is passed below Exh.49 in Regular Civil Suit No.244/2002 and the petitioners are permitted to file their written statement to defend the suit as well as to produce documentary evidence. However, such written statement may be filed latest by 5th May, 2004. In case, the written statement is not submitted within the stipulated time, the order of the trial Court shall remain in force and if the same is filed within the stipulated time, the trial Court shall take it on record and proceed with the suit in accordance with law. Since the petitioners are negligent in pursuing the matter, each of the petitioners are directed to pay cost of Rs.5,000/- (Rs.15,000/- in all). The amount of cost to be deposited in the trial Court by the same date, i.e., 5th May, 2004. Thereafter, the respondent No.1 shall be entitled to withdraw the said amount unconditionally. The trial Court shall ensure that such amount of cost is deposited.

7) Accordingly, this Civil Revision Application is allowed. Rule is made absolute with no order as to costs.

8) Writ to be sent to the trial Court forthwith.

(P.B.Majmudar,J.)

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